

Virginia Regulatory Town Hall

Final Regulation Agency Background Document

Agency Name:	Virginia Department of Health
VAC Chapter Number:	12 VAC 5-581
Regulation Title:	Sewage Collection and Treatment Regulations
Action Title:	Final
Date:	December 26, 2001

Please refer to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the final regulatory action package.

Summary

Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment, instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published

The proposed Sewage Collection and Treatment (SCAT) Regulations provide standards for the design, construction, and operation of Sewage Collection Systems and Sewage Treatment Works. Upon adoption of these regulations, construction and operation permits will be issued to applicants by the State Health Commissioner upon completion of technical evaluations of submitted engineering documents by the Division of Wastewater Engineering staff of the Office of Environmental Health Services. The issuance of such permits will be required upon the filing of a complete permit application with the Department of Environmental Quality, Water Division, followed by the development of either a Virginia Pollutant Discharge Elimination System (VPDES) permit, or a Virginia Pollution Abatement (VPA) permit. Timelines have been established to expedite the regulatory actions.

The existing 1977 Sewerage Regulations promulgated jointly by the State Water Control Board and the State Board of Health will remain in effect until superseded by the proposed SCAT Regulations adopted by either board as appropriate (Chapter 194 of the 1991 Acts of the General Assembly).

Changes Made Since the Proposed Stage

Please detail any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication. Please provide citations of the sections of the proposed regulation that have been altered since the proposed stage and a statement of the purpose of each change.

The final SCAT Regulations include a timeline of 30 days to evaluate a complete submission of design documents and 15 days to notify the owner of the final decision based on that evaluation (12 VAC 5-581-130C). The detailed content of sludge management plans (12 VAC 5-581-200) and operational testing for treatment works (12 VAC 5-581-1020), were revised to remove any conflicts with existing regulations. Implementation of the proposed SCAT Regulations will provide owners, operators, consultants, contractors, and equipment suppliers with updated, uniform standards for installation of sewage collection, treatment, reuse and disposal of sewage for large and small communities.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency .including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

On December 7, 2001, the State Board of Health adopted final regulations entitled, the Sewage Collection and Treatment (SCAT) Regulations (12 VAC 5-581), and approved rescinding the existing 1977 Sewerage Regulations.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and web site addresses, if available for locating the text of the cited authority, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law

Section 32.1-164 of the Code of Virginia authorizes the State Board of Health to promulgate regulations to govern the Safe and Sanitary Collection, Transportation, Treatment, and Disposal of Sewage for all sewerage systems. Sections 62.1-44.18 et. sq. of the Code of Virginia describes the interrelationship of the State Water Control Board and the Virginia Department of Health for regulation of sewage discharges. These regulations are based on Section 62.1-44.19 and Section 32.1-164 of the Code of Virginia.

§62.1-44.18 of the *Code* of Virginia specifies that all sewerage systems and sewage treatment works shall be under the general supervision of the VDH and the State Water Control Board/Department of Environmental Quality (DEQ).

§62.1-44.19 of Chapter 3.1, Title 62.1 *Code* of Virginia specifies that before any owner may erect, construct, open, expand or operate a sewerage system or sewage treatment works which will have a potential discharge or actual discharge to state waters, such owner shall file with the State Water Control Board/DEQ an application for a certificate. Before issuing the certificate, the State Water Control Board consults with and gives consideration to the written recommendations of the VDH pertaining to the protection of public health. Upon completion of advertising, the State Water Control Board/DEQ determines whether the application is complete. After the certificate has been issued by the State Water Control Board/DEQ, the owner must acquire from the VDH (i) authorization to construct the systems or works for which the Board has issued a discharge certificate and (ii) upon completion of construction, authorization to operate the sewerage system or sewage treatment works. These authorizations are to be obtained in accordance with regulations promulgated by the State Board of Health under §32.1-164. The VDH will then notify the State Water Control Board/DEQ when such authorizations are granted. Such authorization will be in the form of construction and operation permits issued by the State Health Commissioner, in accordance with the provisions of the *SCAT Regulations*.

Certain Federal(PL87-128,7 USC1989, 7 CFR Part 1942,Subpart A) and private loan institutions require a State certification of the adequacy of designs for sewage collection and treatment systems prior to any commitment to provide funds for construction of such projects. These loans have previously amounted to nearly 100 million dollars annually.

The State Attorney Generals Office has notified the State Health Commissioner on November 9, 1999, that adoption of the proposed revised SCAT Regulations by the State Board of Health would be within the scope of authority granted by the General Assembly. The public comment and hearing process was completed in accordance with the Administrative Process Act and the Virginia Department of Health Public Participation Guidelines.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

The proposed Sewage Collection and Treatment (SCAT) Regulations will replace the existing Sewerage Regulations jointly adopted by the State Water Control Board and the State Board of Health in 1977.

The 1977 Joint Regulations established the accepted standards for design of sewage collection systems and sewage treatment works as necessary to protect public health and prevent violations of water quality standards from improperly treated sewage discharges. The existing Sewerage Regulations were also developed in response to the creation of the Federal Construction Grants program administered by the U.S. Environmental Protection Agency. The Construction Grants program has now been replaced by a revolving loan program involving more incentives to begin construction as expeditiously as possible. The proposed SCAT Regulations are necessary in order to establish the procedures and standards that will streamline the current regulatory process for evaluating and approving the construction of sewage collection and treatment systems.

The goal of the proposed SCAT Regulations is to provide for a number of important services that will benefit the public, the private business sector and local governments, especially small communities, including:

1. Assure financial institutions that fiscal responsibility will be provided by the proposed system design so that revolving loans will be available for final design and construction.
2. Provide the means to evaluate new or non-conventional equipment in order that equipment manufacturers will be able to compete fairly and responsibly to provide the most economical technology.
3. Provide technical assistance and liability protection to consultants so that owners with limited resources can procure reasonably priced professional design services.
4. Provide assurance that constructed systems can be operated in compliance with permit requirements so that owners will not have to bear legal and other costs of permit enforcement actions.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement of the regulatory action's detail.

Prior to the Project Streamline Initiative HB1449 (1991), Section 62.1-44.19 of the State Water Control Law required that the State Health Department conduct a technical review of proposals for sewage collection, treatment, and disposal of sewage for sewerage systems, and file a report with the State Water Control Board. This letter report would contain the State Health Department's recommendations for approval or disapproval of the proposal, as authorized under Section 32.1-164 of the State Health Code. Upon adoption of the SCAT Regulations, owners of sewerage facilities or

associated permit applicants will be directed to obtain construction and operational permits from VDH prior to final issuance of either a Virginia Pollutant Discharge Elimination System (VPDES) permit, or a Virginia Pollution Abatement (VPA) permit by DEQ. After the adoption of SCAT Regulations the formal letter report procedure will be replaced by a simple notification that construction or operational permits have been issued by VDH. This streamlined procedure will reduce the existing time periods required to notify owners and applicants to proceed with construction. The owners will receive a notification letter including a new standard permit form authorizing construction or operation. The proposed SCAT Regulations will revise outdated technical design standards contained in the existing regulations and provide for more timely and efficient issuance of construction and operation permits by the State Health Commissioner in order to streamline the current permit process.

Issues

Please provide a statement identifying the issues associated with the final regulatory action. The term "issues" means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

The proposed SCAT Regulations will effect many benefits, including outlining current standards of practice and the technical design standards and operational requirements to ensure that all construction of new or upgraded processes will provide the capacity and/or performance reliability necessary to comply with permit requirements. Permit noncompliance can result in both, costly enforcement actions and the improper and unregulated disposal of sewage which would result in pollution of surface and groundwater, contamination of soil and exposure of the public to infectious agents. The proposed SCAT Regulations administered through the VDH, Division of Wastewater Engineering (DWE) will not only facilitate a more expeditious evaluation and approval of plans and specifications for the construction of new, or expanded sewerage systems and treatment works, but will also ensure that public health is not endangered and that environmental resources are properly managed.

Implementation of the proposed SCAT Regulations will provide for some consolidation of agency resources now utilized to ensure the safe and reliable collection, treatment and disposal of sewage, thus eliminating previous anticipated needs for additional staff resources. A relatively small disadvantage involves the need to revise the current interagency relationships for issuance of construction and operation permits and to inform the owners of sewage collection and treatment systems of those changes. This is a marginal consideration in light of the many benefits these regulations promise; the agency knows of no other disadvantage to the public or the Commonwealth.

Public Comment

Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.

**RESPONSE TO PUBLIC COMMENTS RECEIVED ON THE
 THE PROPOSED SCAT REGULATIONS
 (12 VAC 5-581)**

SECTION NUMBER	SUMMARY OF COMMENT	AGENCY RESPONSE
General	The Registrar’s Office recommended a number of edits and the VDH staff review revealed additional other wording changes were also in order.	The wording changes are made throughout the regulation document and VDH staff wording changes are enclosed in brackets.
10	Definition of “Certificate” and “Field Office” should be revised to reflect new VDH procedures.	The definitions in Section 10 were revised as indicated in the attached Proposed Regulations.
10	Definition of “land application” should be consistent with the <i>Biosolids Use Regulations (12 VAC 5-585)</i> .	The definition was revised by changing “..assimilation, utilization[,] and[or] pollutant removal.”
110	Virginia Association of Municipal Wastewater Agencies (VAMWA) recommends using 25% as the percent change in treatment capacity that requires a formal submission of design documents.	Sections 110 A, 170 C and 190 A have been revised as recommended.
120	Virginia Association of Municipal Wastewater Agencies (VAMWA) recommends replacing the term “Commissioner” with “Division,” where a document approval is involved, in order to reduce any potential delays in approval of engineering document submissions.	Sections 120, 130 C, 160, 190 C, 200 A, and 230 B have been revised as recommended.
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130	Virginia Association of Municipal Wastewater Agencies (VAMWA) recommends clarification of the requirements for document submission and processing steps.	Section 130 has been revised as recommended to indicate when evaluation of documents may be required. Approval of a design concept is provided for.
130	Virginia Association of Municipal Wastewater Agencies (VAMWA) recommends clarifying the document submission and approval timelines in order to assure that document evaluation will provide “value added” to the submitted design.	Section 130 C has been revised as recommended to provide for a “30 day initial response time,” unless the State Health Commissioner extends that time. Notification of final approval is to be transmitted “within 15 days of the decision.”
140	Virginia Association of Municipal Wastewater Agencies (VAMWA) recommends clarifying the timelines for document processing and scheduling of a conference.	Section 150 has been revised as recommended to include the “30 day initial response time,” and scheduling of a conference within 15 days of that request.
160	Virginia Association of Municipal Wastewater Agencies (VAMWA) recommends referencing approval statements to the revised section 130 C. .	Sections 160 C, 170 F, 180 C, 190 C, 200 B, and 220 have been revised as recommended to reference 12 VAC 5-581-130 C.
170	Virginia Association of Municipal Wastewater Agencies (VAMWA) recommends flexibility in the required number of document copies submitted for evaluation.	Sections 170 and 190 A have been revised as recommended to give the consultant flexibility in the number of copies submitted for evaluation.

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190	Virginia Association of Municipal Wastewater Agencies (VAMWA) recommends clarifying approval procedures.	Section 190 B has been revised as recommended to clarify submission of revisions and conditional approvals.
200	Virginia Association of Municipal Wastewater Agencies (VAMWA) and the Department of Environmental Quality (DEQ) recommend clarifying the approval of Sludge Management Plans in relation to the current regulations of each agency.	Section 200 has been revised as recommended to remove any conflicts with both DEQ Permit Regulations and the <i>Biosolids Use Regulations (12 VAC 5-585)</i> .
320	Virginia Association of Municipal Wastewater Agencies (VAMWA) recommends deleting references to sampling frequency as this will be addressed in the Operation and Maintenance Manual.	Section 320, 330 and 340 have been revised as recommended.
350	The Department of Environmental Quality (DEQ) recommends clarifying the recommendations for Class IV operators at sewage treatment facilities with design flows of 40,000 gpd or less.	Section 350 has been revised as recommended and references Table 1 and provides a note 5 to that Table stating that “a Class IV operator is not required unless DEQ designates the facility to require an operator.”
630	Virginia Association of Municipal Wastewater Agencies (VAMWA) recommends revising the buffer distance requirements for composting facilities to eliminate possible conflicts with existing regulations.	Section 630 has been revised as recommended and provides for a site specific buffer distance determination.

SECTION NUMBER	SUMMARY OF COMMENT	AGENCY RESPONSE
930	The Department of Environmental Quality (DEQ) and Mr. John Johnson with Shaeffer Engineering and SIL Cleanwater, Inc. recommend revisions to reflect the DEQ proposed water reuse regulations.	Section 930 has been revised as recommended and provides for the VDH evaluation of the sewage treatment process prior to reuse of the effluent.
940 H.1	The Department of Environmental Quality(DEQ) recommends increasing the minimum holding period from 60 to 120 days.	The 60 day value is used only to estimate a minimum area if not justified by climatological data. DEQ may specify a 120 day storage period in their permit.
1020	The Department of Environmental Quality (DEQ) recommends replacing Tables C-1 through C-3 with a new Table with current VPDES Permit sampling requirements	A new table C has replaced the existing Tables C-1 through C-3, as recommended.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the differences that would be the effect of the changes.

All substantive changes are stated in the agency responses listed in the preceding section of this submittal.